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13 BLOCKBUSTER INC.

14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 NETFLIX, INC., a Delaware corporation,  
18  
19 Plaintiff,

20 v.

21 BLOCKBUSTER, INC., a Delaware  
corporation, DOES 1-50,  
22 Defendant.

23 AND RELATED COUNTERCLAIMS  
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Case No. C 06 2361 WHA (JCS)

**STIPULATION AND AGREEMENT  
REGARDING ANTITRUST CLAIMS  
AND DISCOVERY DISPUTES**

Hearing Date: TBD  
Time: 9:30 A.M.  
Courtroom: A, 15th Floor  
District Judge: William Alsup

Complaint Filed: April 4, 2006

1 Plaintiff and Counter-Defendant, Netflix, Inc. ("Netflix"), and Defendant and  
2 Counterclaimant, Blockbuster Inc. ("Blockbuster"), through their respective counsel of record  
3 (collectively, "the Parties"), hereby stipulate and agree as follow:

4 **I. CONDITIONS OF STIPULATION**

5 1. The Parties acknowledge and agree that nothing herein constitutes or  
6 should be construed as an admission of any wrongdoing on the part of Blockbuster or Netflix and  
7 that this Stipulation, its terms, and the agreement reflected herein ("Stipulation and Agreement")  
8 shall not be used in any manner outside of the above captioned action ("Action") except as may  
9 be necessary to enforce the terms of this Stipulation and Agreement.

10 2. The Parties further acknowledge and agree that this Stipulation and  
11 Agreement shall be binding on, and its benefits shall extend to, each of the Party's subsidiaries,  
12 affiliates, successors, assigns, directors, officers, employees, attorneys and agents.

13 3. The term "Answer to Complaint" as used herein refers to and includes  
14 both the Answer to Complaint; Counterclaims filed June 13, 2007, and the Answer to First  
15 Amended Complaint; Counterclaims filed September 11, 2007, in the Action.

16 **II. AGREEMENTS ON BLOCKBUSTER'S ANTITRUST COUNTERCLAIMS**

17 4. Blockbuster and Netflix have reached agreement as set forth in Sections II  
18 and III.

19 5. Blockbuster hereby agrees to dismiss without prejudice its antitrust  
20 Counterclaims 1 and 2 in the Answer to Complaint.

21 6. Blockbuster hereby covenants not to further prosecute in this Action, to  
22 bring suit asserting, or to otherwise assert against Netflix, its antitrust Counterclaims 1 and 2 in  
23 the Answer to Complaint.

24 7. None of the foregoing shall prejudice the parties in any respect in their  
25 prosecution or defense of any of the remaining claims or defenses in the litigation.

26 **III. AGREEMENTS ON RIGHTS RELATING TO DISCOVERY**

27 8. With respect to the issue of whether Blockbuster did not or has not  
28

1 properly retained documents, including electronic data, Netflix agrees that it shall seek no relief  
2 from the Court, whether by way of discovery motion, in limine motion, jury instruction, or  
3 otherwise. Netflix also agrees that it will not mention, whether by means of argument to the  
4 jury, examination or cross-examination of any witness or in any other form, any issues with  
5 respect to the subject of documents not having been retained. Netflix further agrees it will not  
6 seek any legal advantage with respect thereto.

7           9. With respect to the issue of whether Netflix did not or has not properly  
8 retained documents, including electronic data, Blockbuster agrees that it shall seek no relief from  
9 the Court, whether by way of discovery motion, in limine motion, jury instruction, or otherwise.  
10 Blockbuster also agrees that it will not mention, whether by means of argument to the jury,  
11 examination or cross-examination of any witness or in any other form, any issues with respect to  
12 the subject of documents not having been retained. Blockbuster further agrees it will not seek  
13 any legal advantage with respect thereto.

14           10. This Stipulation and Agreement Regarding Antitrust Claims and  
15 Discovery Disputes shall not be referred to in, or be admissible at, the trial in this Action.

16  
17 Dated: April <sup>25</sup>, 2007


18 KEKER & VAN NEST, LLP

19  
20 By: 

21 DARALYN DURIE  
22 Attorneys for Plaintiff and Counterclaim Defendant,  
23 NETFLIX, INC.  
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1 Dated: April 25, 2007

ALSCHULER GROSSMAN LLP

2  
3 By:   
4 William J. O'Brien  
5 Attorneys for Defendant and Counterclaimant,  
6 BLOCKBUSTER INC.  
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10 **PURSUANT TO STIPULATION, IT SO ORDERED.**  
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13 Dated: \_\_\_\_\_

HONORABLE WILLIAM ALSUP  
UNITED STATES MAGISTRATE JUDGE

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